IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.163 OF 2005
IN
WRIT PETITION NO.7442 OF 2005

Om Sai Chhaya Co-operative
Housing Society Ltd. through
its Chairman Shri P.S.Ghag. .. .. Appellant
(Orig.Petitioner)

V/s.

The State of Maharashtra & ors. .. Respondents
(Orig. Respondents)

Mr.A.S. Desai for appellant.

Mr.S.S.Bhise for respondent No.4.

Mr.R.D.Rane, G.P. for res. Nos.1 to 3.

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 1st September 2005

ORAL ORDER : (Per H.L. Gokhale, J.)

1. Heard Mr.Desai for the appellant. Mr.Bhise appears for respondent No.4, who is the contesting party. Mr.Rane, Government Pleader, appears for respondent Nos.1 to 3.

2. This Appeal seeks to challenge the order dated 4th April 2005 passed by the learned Single Judge on Writ Petition No.7442 of 2004 filed by the appellant herein which came to be dismissed by that order. The appellant herein had challenged the order passed by the Minister of State for

Co-operation interfering into the decisions of the statutory Authorities under the Maharashtra Co-operative Societies Act, 1960.

3. The case of the appellant is that the appellant-Housing Society is proposing to develop a plot of land wherein its members' huts are situated. The hutments for which the appellant-Society is formed and the hutments occupied by the members of Shri Vaibhav Co-operative Housing Society (Proposed) of which respondent No.4 is the Chief Promoter, are adjoining each other and mixed up. Respondent No.4 has some 24 members whereas the appellant-Society has 157 members. It is the case of the appellant that the land on which both these groups of hutments are situated can be better developed, if it is developed together. Basically it will be a scheme to be financed by a developer whereunder the hutment dwellers will be given minimum 225 sq. feet carpet area free of any expenditure. This is under the Government scheme. It is to avail of the benefit of this scheme that the appellant-Society is formed to cover all the 180 hutments.

4. Respondent No.4, who is the Chief Promoter

of this Shri Vaibhav Co-operative Housing Society (Proposed), which has 24 members, does not want to go along with the appellant-Society for reasons best known to him. The Registrar of Co-operative Societies had declined to register this separate Society under the Maharashtra Co-operative Societies Act under the promotership of respondent No.4. That order was first confirmed by the Divisional Joint Registrar, Navi Mumbai, but later on interfered by the Minister of State for Co-operation by his order dated 19th August 2004, which order came to be challenged in the Writ Petition.

5. Mr.Desai, learned Counsel appearing for the appellant, points out that the learned Single Judge was in error in looking to the matter as one concerning only the registration of a Co-operative Society. He submits that ultimately the registration is for putting up the houses for hutment dwellers. He has drawn our attention to the fact that the hutments occupied by the group of 24 persons are scattered and the order passed by the Minister of State for Co-operation also does not dispute this fact. His submission is that if these 24 hutment dwellers are permitted to develop separately, it will create difficulties

for the appellant-Society which is espousing the cause of some 157 hutment dwellers. He has pointed out that in the scheme proposed by the appellant-Society, care is taken to provide houses to these 24 persons also. In his submission, therefore, there was no need to have a separate registration for the Society of these 24 persons.

6. Mr.Bhise, learned Counsel appearing for respondent No.4-Chief Promoter of Shri Vaibhav Co-operative Housing Society (Proposed), submitted that the 24 persons to whom he is representing, want to have a separate Housing Society of their own. He further submitted that the question of the subsequent construction should not be mixed up with the question of registration and the two aspects should be considered separately. He raises a question with respect to the property being in the CRZ area and thereby some difficulties cropping up.

7. We have considered the submissions of both the Counsel. We do not see any merit in the submission of Mr.Bhise. The registration of the Co-operative Housing Society, which is being espoused by respondent No.4, is not merely for the sake of having a registration and keeping that

paper document in a file. That registration is ultimately for putting up a housing complex wherein these 24 persons are to be housed. If that is so, we fail to understand as to why these 24 persons are reluctant to go along with the larger number of persons who have formed themselves into one Society and who are ready to take care of these 24 persons as well. In our view, the Registrar of Co-operative Societies was right in declining the registration so also the Appellate Authority and the Minister of State for Co-operation had no business to interfere with their orders when he clearly accepted that the hutments occupied by the 24 persons are scattered.

8. As far as the submission with respect to the difficulties on account of part of the land being in CRZ area is concerned, that will be taken care of when the plans are submitted to the Planning Authority for development. Inasmuch as the registration of the group under respondent No.4 is not to be granted, there is no question of looking into the authorities pursuing the plans submitted by respondent No.4 any more.

9. In the circumstances, we allow this Appeal and set aside the order passed by the learned

Single Judge as well as by the Minister of State for Co-operation. The order passed by the Registrar of Co-operative Societies declining registration to the group floated by respondent No.4 and which is confirmed by the Appellate Authority, will stand confirmed.

10. Appeal is allowed accordingly in the aforesaid terms. No order as to costs.

11. Inasmuch as the Appeal is allowed, no order is required on Civil Application No.194 of 2005.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)